



INDIANA
WORKFORCE
DEVELOPMENT
AND ITS **WorkOne** CENTERS

TO: Indiana's Workforce Investment System

FROM: Joshua D. Richardson
Deputy Commissioner, Unemployment Insurance

DATE: February 3, 2012

SUBJECT: DWD Policy 2011-07
Planned Shutdown Effects upon Unemployment Insurance Benefits

Purpose

To provide guidance regarding a claimant's eligibility for U.I. benefits during employer designated vacation periods.

Rescission

DWD Policy 2010-24

Content

Applicability

The Indiana Department of Workforce Development (DWD) establishes this policy to provide guidance regarding an individual's eligibility for unemployment benefits during a vacation period.

The applicable Indiana Code cites are as follows:

IC 22-4-3-1. "Totally unemployed" defined

Sec. 1. An individual shall be deemed "totally unemployed" in any week with respect to which no remuneration was payable to him for personal services.

IC 22-4-3-2. "Partially unemployed" defined

An individual is "partially unemployed" when, because of lack of available work, he is working less than his normal customary full-time hours for his regular employer and his remuneration is less than his weekly benefit amount in any calendar week, but no individual shall be deemed totally, part-totally, or partially unemployed in any week which he is regularly and customarily employed full-time on a straight commission basis.

IC 22-4-3-4. Exception; vacation period with remuneration

(a) An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the department finds that the individual is:

week in which the department finds that the individual is:

- (1) on a vacation week; and
- (2) receiving, or has received, remuneration from the employer for that week.

(b) Subsection (a) does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation period.

IC 22-4-3-5. Unpaid vacation

(a) An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the department finds the individual:

- (1) is on a vacation week; and
- (2) has not received remuneration from the employer for that week, because of:
 - (A) a written contract between the employer and the employees; or
 - (B) the employer's regular vacation policy and practice.

(b) Subsection (a) applies only if the department finds that the individual has a reasonable assurance that the individual will have employment available with the employer after the vacation period ends.

(c) Subsection (a) does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation period.

This policy seeks to outline the criteria that the Department will use to determine if a claimant was on an employer mandated vacation week due to the: 1) terms of a written contract or 2) employer's regular vacation policy and practice.

Vacation Period Defined

The Department recognizes that an Employer has the right and the ability to designate certain weeks as "paid vacation" or "unpaid vacation" for their employees. According to IC 22-4-3-4 and IC 22-4-3-5, such a designation by an employer is not binding on the Department. Nor is an employer required to make an explicit declaration in advance of designating a "paid vacation" or "unpaid vacation" week; however, such a declaration would be indicative of the employer's intent. The employer's intent is a question of fact to be determined by the finder of fact in each case.

The Department is charged with making a determination or finding under this statute based upon statutory criteria. The Department will consider a mandated or planned facility shutdown to be a vacation week pursuant to IC 22-4-3-4 and IC 22-4-3-5. The Department will consider the following factors to determine whether an employee is on a vacation week:

1. Whether a written contract between the employer and the employee provides for a paid or unpaid vacation week designation;
2. Whether a vacation week was the result of an employer's regular vacation policy and practice;
3. Whether an employer provided a reasonable assurance to the employee that they would have employment available with the employer after the vacation period ends. Such an assurance is not required to be provided by explicit declaration or direct communication, but may be inferred by past employer or employee conduct, policy, practice or custom, such that the employee knew or should have known of their employment availability. Additionally, such an assurance shall provide more than a speculative date of return to employment in order to be reasonable;

4. Whether, as part of the above-mentioned reasonable assurance, an employer gave reasonable notice to the employee concerning the vacation week or facility shutdown. Such notice is not required to be provided by explicit declaration or direct communication, but may be inferred by past employer or employee conduct, policy, practice or custom, such that the employee knew or should have known of the vacation week or mandated facility shutdown;
5. Whether the employer, on their own initiative, has provided the Department with advance notice of any vacation week or shutdown period.

This list of considerations is not exclusive and the Department will make its determinations on a case-by-case basis.

Ownership

DWD U.I. Benefit Administration
10 North Senate Avenue
Indianapolis, IN 46204

Effective Date

Immediately

Ending Date

Upon rescission

Action

Indiana's workforce investment system will follow the guidance contained in this policy. Directors and managers will ensure that staff that work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines.